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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

TERENCE B. BURKE,

Case No. 6:10-CV-6328-TC

Plaintiff,
vs.

WELLS FARGO BANK N.A.,

Defendant's
MOTION TO DISMISS AND RESPONSE
TO MOTION FOR PRELIMINARY
INJUNCTION
Pursuant to Fed. R. Civ. P. 12(b)(6)

Defendant.
ORAL ARGUMENT BY TELEPHONE
REQUESTED

LR 7-1(a) CERTIFICATION

Counsel for defendant Wells Fargo Bank, N.A. (improperly named in the summons) (“Wells Fargo”) certifies that she attempted to confer by telephone in good faith with plaintiff to resolve this dispute before filing this motion, by calling the telephone number set forth in the Court’s electronic docket. The person who answered the telephone advised that counsel dialed the wrong number. Counsel for defendant Wells Fargo utilized publicly available records in an attempt to obtain a telephone number for plaintiff, but was unsuccessful.

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INJUNCTION

MOTION

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Wells Fargo moves to dismiss this case with prejudice on the grounds that plaintiff has failed to state a claim upon which relief may be granted. Wells Fargo further requests that plaintiff's motion for preliminary injunction be denied.

In support of this motion, Wells Fargo relies upon the Memorandum in Support of defendant's Motion to Dismiss, Request for Judicial Notice or Incorporation by Reference, and the Declaration of Pilar C. French in Support of Defendant's Request for Judicial Notice or Incorporation by Reference and Motion to Dismiss submitted concurrently herewith.

DATED: October 29, 2010

LANE POWELL PC

By /s/ Pilar C. French
Pilar C. French, OSB No. 962880
Telephone: 503.778.2170
Attorneys for Defendant

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INJUNCTION

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2010, I caused to be served a copy of the foregoing MOTION TO DISMISS AND RESPONSE TO MOTION FOR PRELIMINARY INJUNCTION on the following person(s) in the manner indicated below at the following address(es):

Terence Burke
771 Shadow Wood Drive
Bend, OR 97702 (name and address in complaint)

And

Terence B. Burke
PO Box 658
Sisters, OR 97301 (name and address in summons)

- by **CM/ECF**
- by **Electronic Mail**
- by **Facsimile Transmission**
- by **First Class Mail**
- by **Hand Delivery**
- by **Overnight Delivery**

/s/ Pilar C. French

Pilar C. French

CERTIFICATE OF SERVICE